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TRANSLATION OF OFFICIAL ACTION

Date of Issue:	August 26, 2003
Date of Receipt:	September 17, 2003
Applicants:	Mems Optical, Inc.
German Patent Application:	101 32 435.9-51
Your Ref.:	MEMS-0139-DE
Our Ref.:	F 2178 DE

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RESPONSE TO THIS OFFICIAL ACTION IS DUE BY

March 17, 2004

Request for substantive examination, fee deposited on September 11, 2001

Petition of received on

The examination of the above mentioned patent application has led to the result set forth below.

A term of

six months

starting upon notification of this Official Action is granted for filing a reply.

Documents filed together with the reply (e.g. claims, description, parts of the description drawings) must be filed in duplicate on separate sheets. The reply as such is to be filed only one-fold.

If the claims, the description or the drawings are amended in the course of the proceedings, the applicant must indicate in detail where in the original case papers the inventive features described in the new case papers are disclosed, unless the amendments were proposed by the German Patent and Trademark Office.

Information on the possibility of utility model derivation

The applicant of a patent application filed with effect for the Federal Republic of Germany may file a utility model application relating to the same subject-matter and simultaneously claim the filing date of the earlier patent application. This derivation (Section 5 of the German Utility Model Act) is possible up to the expiry of a period of two months from the end of the month in which the patent application is disposed of by means of final rejection, voluntary withdrawal or implied withdrawal, or after the opposition procedure, if any, is terminated or - in the event of the grant of the patent - the term for filing an appeal against the decision of grant has fruitlessly expired. Detailed information on the requirements of a utility model application, including the derivation, are contained in the leaflet for utility model applicants (G 6181), which can be obtained free of cost at the German Patent and Trademark Office and the Patent Information Centres.

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In this Official Action the following references are cited for the first time (their numbering, if any, shall also apply throughout the further proceedings):

- (1) DE 195 02 624 A1
- (2) DE 196 48 063 A1

From document (1), cf. in particular claim 1 and column 4, line 49 to column 5, line 16, the production of an exposure mask for lithographic processes in one or more steps by means of photosensitive material and developer.

Thus, the features of claim 1 of the present invention are to be considered as prior art and claim 1 is not allowable due to lack of novelty of its subject-matter.

Claims 2 to 6 are thus not allowable either since they are back-referenced to non-allowable claim 1.

It is true that the apparatus claim is directed to a mask but the characteristic features only contain the process of production of claim 1; thus, the above said regarding claim 1 also applies to claim 23 and claim 23 is also not allowable due to lack of novelty of its subject-matter.

Claims 24 to 28 are not allowable either since they are back-referenced to non-allowable claim 23.

Claims 8 and 29 relate to a microstructure and the corresponding process of production and thus to a different technical subject-matter. Claims 8 and 29 are thus not uniform and cannot be maintained in the present invention.

Consequently, claim 8 with the corresponding subclaims 9 to 22 and claim 29 with corresponding subclaims 30 to 34 are also not allowable.

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Regarding the technical subject-matter of claims 8 and 29, reference has to be made to document (2), in which the production of micro-lenses by exposure of photoresist with subsequent heat treatment for smoothing the surface is described.

If Applicant holds the view that the present case papers contain patentable features or measurements, it is requested that detailed arguments be provided in this respect.

The grant of the patent cannot be expected on the basis of the present case papers; rather, the rejection of the application has to be anticipated.

If Applicant does not intend to file a reply to this Office Action, it is requested that receipt is informally acknowledged.

Examining Section for Class G 03 F

Dr. Eckart

Extension 3207

Enclosures:

Copies of two references (in duplicate)